

[19th January 1949]

III.—NON-OFFICIAL BUSINESS.

THE MADRAS HINDU BIGAMOUS MARRIAGES PROHIBITION AND DIVORCE BILL, 1947 (L.A. BILL NO. 6 OF 1947)—*cont.*

Clause 2.

* DR. V. K. JOHN :—“ Mr. President, I beg to move the amendments standing in my name to clauses 2, 3 and 4, namely :—

‘ For clauses 2, 3 and 4, substitute the following :—

“ 2. No Hindu, Buddhist, Jaina or Sikh resident in the Province of Madras and having a wife or husband living shall solemnise or go through the form of a marriage except under the provisions of rules made from time to time by the Government and approved by the Legislature.

“ 3. Any person contravening or abetting the contravention of the provision of section 2 shall be deemed to have committed an offence under section 494 or section 495 of the Indian Penal Code.”

“ Mr. President, if you will kindly allow me to speak on these two amendments together, it would be convenient. Now, Sir, I have moved these two amendments mainly for two reasons. First of all, clauses 2, 3 and 4 of this Bill are very ambiguous, cumbersome and badly worded. This is a piece of social legislation and not only the wording used and definition given should be clear and unambiguous but there must be flexibility in its provisions. This Bill contains two matters. One is prevention of bigamy and the other is provision for divorce. In clause 2, the definition of the term ‘ Hindu ’ has been given. I say that the definition is very badly worded, and is very cumbrous. I used to criticize the Bills introduced by the Government, on their bad draftsmanship, but after having seen this Bill, which has been drafted by a non-official gentleman, I think I must compliment the Government. If you read clauses 2, 3 and 4 of the Bill as it stands, you will see how cumbersome, how ambiguous and how badly worded these clauses are. But, here, in this connexion, I should like to make it perfectly clear that I am not one of those who oppose the principles underlying this Bill providing for monogamous marriages. But my submission is that when we pass a legislation on any matter, we must pass it in a manner which should be acceptable to the Legislature. I was certainly of the opinion and am still of the same opinion that in a matter like this we should have an all-India legislation and I do not see why this Bill should be confined to the Province of Madras alone, when the subject-matter of the Bill should be applied to all the Hindus in India. In fact, this Bill could have been introduced by somebody in the Central Legislature and then we could have a law for all Hindus, Buddhists, Jains and

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Sikhs throughout this country. Be that as it may, let me confine myself to the amendments in question. Now, how does this Bill define the term 'Hindu'? Clause 2 of the Bill states that—

'In this Act, "Hindu" means—

(a) a person professing the Hindu religion in any of its forms or developments, including a Virashaiva or Lingayat or a member of the Brahmo, Prarthana or Arya Samaj, or

(b) a person professing the Buddhist, Jaina or Sikh religion.'

"In effect, this definition comes to this, that a Hindu means a Buddhist, Jaina or a Sikh. I submit, Sir, that this is atrocious. It is just like saying that for purposes of this Act, night means day, man means woman or that a chair means a table. It is absurd to insert a definition like that in a law. Why not we say plainly and clearly that no Hindu, Buddhist, Jaina or Sikh shall take a second wife when the first is alive? That would be plain enough. After all what we want is that people should understand the provisions of the law and the language we use should be clear to them. Now here, according to this definition, it comes to this, that a Hindu means a Buddhist. Does this not sound absurd? We should not be a party to a definition like this. Suppose, for example, it is said that 'No Hindu, Buddhist, Jaina or Sikh having a wife or husband living shall solemnize or go through another marriage;' then that will satisfy the draftsman of this Bill, because that conveys his real intention. I submit, Sir, that there should be a decorum in the use of the language in a piece of legislation.

"Now, let us look at the definition again. Explanation (1) under the definition says that a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion is a Hindu. This again means that a convert to a Buddhist, Jaina or Sikh religion is a Hindu. One cannot think of passing a legislation in these words, when we can certainly use a better, more direct and more correct language to make a provision which the author of the Bill wants to provide.

"Then, Sir, explanation (2) states that it shall be presumed, until the contrary is proved, that a person who is not a Muslim, Christian, Parsi, or Jew by religion is a Hindu. There are presumptions in law. We have got it in the Evidence Act. But, after all, it is not difficult to find out whether a person is a Hindu by religion or a Buddhist or a Jaina or a Sikh. Why cannot we presume that a person is a Christian, if he is not a Muslim? I submit, Sir, that these explanations and definitions are so very cumbersome and unnecessary to express the intentions of the author of this Bill. This Bill should have gone through the hand of a person who could draft.

"Again, sub-clause (2) of clause 2 states—

'For the purposes of this Act, the domicile of a Hindu shall be determined in accordance with the provisions contained in sections 6 to 18 (both inclusive) of the Indian Succession Act, 1925.'

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"Sir, during the general discussions of the Bill on its first reading, I read out sections 6 to 18 of the Indian Succession Act in this House and explained clearly that those sections have nothing to do with marriage at all. They deal only with succession to property and they are not germane to the provisions under this Bill and I therefore think that it is quite unnecessary to refer to those sections in this Bill.

'Then, Sir, clause 3 of this Bill says—

'This Act applies to Hindus domiciled in the Province of Madras.'

"Sir, you may remember that I raised this question of domicile even during the general discussions of the Bill and pointed out that there is no question of domicile of a person with reference to a Province, where he is living. He is only a resident of the Province. Domicile is with reference to the country as a whole following the same law. There can be no Hindus domiciled in the Province of Madras. If we want to extend the provisions of this Bill to all the Hindus in this Province, then we must say that this Act extends to all Hindu residents in the Province of Madras. You cannot extend the provisions of this Bill outside Madras. I cannot therefore understand the definite intention of this clause.

'Then, clause 4 of the Bill says—

'Notwithstanding any rule of law, custom or usage to the contrary, any marriage solemnized after the commencement of this Act between a man and a woman either of whom has a spouse living at the time of such solemnization shall be void, whether the marriage is solemnized within or outside the Province of Madras :

Provided that a man or woman whose marriage has been dissolved by a final order of a court of competent jurisdiction under section 5 or under any other law for the time being in force, or in accordance with any custom or usage permitting of divorce, may solemnize a valid marriage with another, after the expiry of six months from the date of such final order or from the date on which the marriage was dissolved in accordance with such custom or usage, as the case may be.'

"I submit, Sir, that there is too much of verbiage and unnecessary wording in this clause. The author wants to provide that any marriage solemnized after the commencement of this Act shall be void, if either party has a spouse living. When the marriage is dissolved, either party will lose their relationship. Six months after dissolution either party can marry somebody else. Why all the verbiage in the clause and unnecessary and cumbersome language? Why do you want to put in this unnecessary proviso? These will only bring in further complications which will lead to unnecessary litigation."

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MR. PRESIDENT :—" Perhaps the idea may be to give a six months' time in the same way as is provided for Iddat among Muhammadans in the Muhammadan Law, relating to Talak. May I know what is the time allowed according to the Christian Law? "

DR. V. K. JOHN :—" Sir, there is no such provision in the Christian Law. If a decree absolute is given, then the woman can marry immediately. The law of divorce in the Christian countries is founded upon the experience of ages. There are two decrees granted in connection with divorce, one the decree nisi and the other, the decree absolute. One of the fundamental principles of the law relating to divorce is that there should not be any collusion. If there is any such collusion, then the proctor can interfere and set aside the decree nisi. A court can give only a decree nisi, because the court does not know whether any of the facts have been concealed from it. It could only make enquiries on admissions of parties. First a decree nisi is granted and only after six months a decree absolute is given. During these six months, any stranger or the proctor appointed by the Crown can intervene and file a petition to the court to set aside the decree nisi.

" But this provision in this Bill does not provide for either a decree nisi or a decree absolute. But when once a decree is there, which you cannot set aside, why wait for six months for another marriage? Everybody is not familiar with the principle underlying the law of divorce. I claim that I have studied the principles underlying divorce and I practice in the matrimonial court. I have appeared in many case. I have studied the fundamental principles. Divorce is a matter concerning society. We should not merely bring in a Bill forgetting the fundamental principles underlying monogamy and divorce. In the place of these cumbrous clauses, what I am suggesting is the introduction of one small section to the effect that no Hindu, Buddhist, Jaina or Sikh resident in the Province of Madras and having a wife or husband living shall solemnize or go through the form of a marriage except under the provisions of rules made from time to time by the Government and approved by the Legislature. This can take the place of clauses 2, 3 and 4. As for punishment, I am attracting the provisions of Penal Code. The Bill as it stands is also doing that. If my amendment is accepted, there will be a great advantage. We are now legislating on a social matter. You as a lawyer know, Sir, that law has got two characteristics, one is certainty and the other is flexibility. When you legislate, you lose flexibility. Law should live. And law must grow. You must always provide for flexibility in any legislation which you pass. Now we have a national Government who are in intimate touch with the ideas of the people. Law is the idea of right or wrong in a people. The Government know what people think is wrong and what people think is right. When we have a national Government and a legislature to which the members are elected, we certainly know in time how the ideas of the people grow. To-day, this is not a matter merely concerning the Hindus, Sikhs, Jains and Buddhists.

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It is a matter concerning everybody, the Muslims, the Christians and every other member of society. There may be a feeling that in very, very exceptional cases man might be allowed to marry while his wife is alive. These cases may be very exceptional. If that is the feeling of the majority, the rules will provide for it and if that feeling dies down and people would rather have monogamy absolutely, the Government would change the rule. I know that 99 per cent or 999 cases out of a thousand of the Hindus, Buddhists, Sikhs or Jains do not take a second wife when the first wife is alive. The exception usually is when the wife is ill or the couple have no children. If it is in conformity with the considered opinion of society to have monogamy as a rule, let it be so, but there may be some exceptions. If there be no exception, there may be concubinage. You know, Sir, that the English, Roman and other systems of law consider illegitimacy as bastardism. An illegitimate son has no right to the property of his father. We in India have a more advanced law from the ancient times. After all, an illegitimate son is not responsible for his illegitimacy. Therefore, the Hindu law provides that he can inherit and he takes an interest in the joint family estate by birth. And that is quite proper. That is why I say that the Hindu Law is much more advanced in this respect than any other system of law. Concubinage is accepted under the Hindu Law. Can we, on the other side, have a law saying that a second marriage is void? A man may be living with the woman keeping her exclusively as a concubine. His child, according to Hindu Law, can inherit. This Bill wants to make a marriage void. I do not know why. Even in the case of the Nambudiris, the marriage is not made void. Of course, the man is punished.

"I say, Sir, that we must make provisions for flexibility. Let the courts decide whether a second marriage is invalid or void. If the general public think that a marriage should be void and the son should not inherit, then it is a different matter. We have our own judges to-day in intimate touch with the opinions of the people to interpret the law. What I say is that, when we make a social legislation, we must provide for flexibility. Therefore, I provide by means of my amendment that the Government can make rules in regard to these matters and get the approval of the Provincial Legislature. What objection can there be to accept my amendment which puts in a simple, clarified and unambiguous language the provision which the draftsman of this Bill wants to introduce. Therefore, I submit that a very simple provision is sufficient for the purpose of putting into the words the intentions contained in the long clauses of the Bill.

"Another thing which I want by means of clause 3 which I have suggested is that any person contravening or abetting the contravention of the provision of section 2 shall be deemed to have committed an offence under section 494 or 495 of the Indian Penal Code. When there is a provision in an All-India law making bigamy an offence, now we need only attract that and we need not produce anything new for those above the age of 18. The drafts-

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man of the Bill has provided in a long paragraph for punishment of persons who neglect to prevent the marriage. I have stated 'whoever abets'. Abetment, Sir, as you know is an offence. Let us make a simple provision that whoever abets the contravention of the provision is also punishable. After all the provisions of the law must be simple. Why have long long verbiage in conveying ideas that ought to be put in a few words into the Bill? What we want is to punish abetment, and not to collar a man saying that he was neglecting the prevention of a marriage. Further the burden of proof is placed on him. Sir, the fundamental principle of criminal jurisprudence is that the burden of proof is not placed on the accused man but it is always on the prosecutor. Of course, a very few exceptions have been made to this principle. I do not see why in this case the burden of proof of preventing a marriage should be on the man who is accused. Why should we not follow the very fundamental principles of jurisprudence? Therefore I say that the Bill is very badly worded and clumsily worded. It does not express the intention properly and it does not provide for flexibility.

"Therefore it is, Sir, that I have taken the liberty to take the time of the House in moving the amendment which would carry out the intentions of the draftsman. Sir, it has been stated again and again on the floor of the House and I have in mind the words of the hon. the Lady Member who seconded the motion for introducing the Bill that if anybody opposed this Bill or if anybody brought any amendment to it, and if that person is a man, then he wants to marry another woman immediately. That kind of allegation is very objectionable because we are all here as responsible Members of the Legislature to frame laws and there should not be any motive attributed. In spite of the attribution of that motive, I was glad to see that Mr. Muthuranga Mudaliar got up and opposed the Bill, because he was willing and bold to say that he did not care for the charge that he wanted to marry again. (Laughter.) I ask the Mover of the Bill in this House not to stand on prestige. After all the Bill is in the Council and it does not matter if it goes back to the Assembly for this amendment. If these amendments are correct and bring out the intention better than the original draft, let us accept the amendment. After all I am not objecting to the fundamental principles. I only say: Let us introduce some flexibility into it and make the language clear."

ABDUL LATIF FAROOKHI SAHIB BAHADUR :—"Sir, I second the amendment."

MRS. MONA HENSMAN :—"Mr. President, Sir, I do not wish to take much of the time of the House over this point . . ."

MR. PRESIDENT :—"I think you have been dragged into the discussion!"

* MRS. MONA HENSMAN :—"I only just want to make it clear that this amendment is not acceptable to some of us here in spite of the reasons which the hon. Member, Dr. John, just mentioned. I would just like to ask you, Mr. President, whether when

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I first spoke on this Bill I used language to convey the sense that no comma should be changed in this Bill. I feel that there is some superimposition on the truth of what was said that day. I would like to point out that no harm was ever meant to anybody. We know that every one is as earnest as we are.

“ But just now I shall come to the question of residence . . . ”

MR. PRESIDENT:—“ Evidently you want to assure Mrs. John that Dr. John is not trying to marry again.”

DR. V. K. JOHN :—“ Various people have approached my wife, Sir, to ask me to support this Bill without any amendment. I have said, Sir, that I could not agree to do that. I am not a henpecked husband.” (Laughter.)

* MRS. MONA HENSMAN :—“ Coming to the question of residence, Sir, I want to point out that the framers of the Bill have put the word ‘ domiciled ’ with a specific intent. There has been some discussion with regard to the meaning of the words ‘ domiciled ’ and ‘ resident ’ in connexion with some other Bills and you were kind enough to clear up the matter in this very House. There is a lot of difference in the legal meaning of the word ‘ domiciled ’ and the word ‘ resident ’. The word ‘ resident ’ would apply to somebody belonging more or less to the soil of the Province of Madras. But the word ‘ domiciled ’ applies to anybody who has taken up his residence with the intention of living in a certain place. I would therefore oppose the change of the words, Sir.

“ The second thing which I want to point out is that there is absolutely no objection for any of us to the hon. Dr. John bringing in as his amendment that there should be an interim period between the judgment regarding the granting of divorce and the decree nisi, if he feels that the question of divorce in the present Bill should be based on a principle parallel to the Christian law. He is an authority on law, Sir, and I do not pretend to claim to be a pedagogue on the subject, as he is.

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“ So I would not object to Dr. John’s moving an amendment that there should be an interim period between the decree nisi and the absolute nullity of the marriage. Such an amendment might be considered by this House. But to object to this particular clause and say that because no provision for reconciliation exists, or can be made for six months this sentence should be taken out, is a different matter. I would oppose that. Sir, any Act that is passed in this House and in Assembly is always subject to various amendments that may be brought forward later. Therefore, it is super-redundant, unnecessary and provocative to put in the wordings ‘ except under the provisions of rules made from time to time by the Government and approved by the Legislature.’ I oppose these words.”

* SRI N. RANGA REDDI :—“ Mr. President, Sir, I would like to answer some of the points made by the hon. Member Dr. John. I oppose the amendment for the following reasons.

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First of all, let me assure my hon. Friend Dr. John that if I felt there was much substance in what he said I would certainly have said that this Bill should go back to the Assembly. His main objection seems to be with regard to the drafting of the Bill. With regard to the wording of the Bill, I say, Sir, the same idea can be expressed in a different way. Why should we take this tortuous course of expressing the idea. I submit that so far as the expression of the ideas is concerned, there would be as many ways as there are human beings in the world. I express the same idea in one kind of language. My hon. Friend put the same idea in another form. The point to be considered is what is the objection to adopting the present form and language. If you look at the language from that point of view, there can be no objection at all to adopting the language that is employed in clauses 3, 4 and 5.

“ My hon. Friend Dr. John said that the word ‘ Hindu ’ has been made to include Buddhists, Jains or Sikhs. This is a legislative enactment. We are not saying anything here which offends the religious sentiments of anybody. Nobody can take objection to the definition. For the purpose of understanding this enactment and for the purpose of seeing to whom this enactment applies, we say that the word may include Jains and Buddhists. Therefore, Sir, no objection can be taken to the use of the terms.

“ The next point is Dr. John's objection to the word ‘ presumption ’. After all, presumptions are provided for in the Acts. Dr. John, being a distinguished lawyer as he is, knows that there are provisions relating to presumptions in the Indian Evidence Act. There are provisions introduced in special enactments also. When the provisions in the Evidence Act are not sufficient, special provisions are made in the special enactments. This House is aware of similar provisions in the Prohibition Act and the various other Acts. Therefore, it should not be taken that anything special has been done in this Bill with regard to presumption.

“ The next point is with regard to the term ‘ domiciled ’. While the Bill was being debated at the first reading stage, my hon. Friend Dr. John spoke on the use of the word ‘ domiciled ’. I must submit, Sir, that the word has been carefully examined and put. The difficulties that are envisaged would not follow. Therefore, the present word can be retained.

“ The next point is with regard to the dissolution of the marriage. My learned Friend Dr. John appealed that the decree should not be granted immediately and that some time should be given for reconciliation and so on. As I said yesterday, Sir, this is a special enactment. This is not the same as judicial separation. Why should we adopt whatever the English law says. Our customs and manners are different from English customs and manners with regard to marriage. No doubt they have introduced a special provision with regard to divorce. We need not slavishly follow the English law. We need not follow the wordings of the English law—the husband or the wife going to a court of law. Why should we not give some chance for reconciliation? ”

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MR. PRESIDENT :—“ May I point out that divorce is not in clause 2. You may speak on it on the relevant clause.”

SRI N. RANGA REDDI :—“ Dr. John said something on clause 2. That is any person contravening or abetting the contravention of the provision of section 2 shall be deemed to have committed an offence under section 494 or section 495 of the Indian Penal Code. My hon. Friend Dr. John criticized the drafting in the sense that ‘ abet ’ means things that are necessary and that there is no need to use the words ‘ performing the marriages, etc.’ I submit, Sir, that the word ‘ abet ’ has a special meaning. It is a special word which has been put into the Indian Penal Code. One has to refer to the General Clauses Act when a word in a special enactment cannot cover all the meanings that are intended to be conveyed by the special enactment. It is for that purpose that the extra words have been used. Therefore, I submit that drafting also cannot be found fault with.

“ I am indeed indebted to my learned friend Mr. Kaleswara Rao who is responsible for the drafting of this Bill and for piloting it in the Assembly. Most of the definitions that are incorporated in the Bill have been borrowed from Mr. Rao's Hindu Code. Therefore, I submit that no objection can be taken with regard to drafting. My hon. Friend also said that this Bill should be very flexible and that exceptions should be provided for. If we allow exceptions to the rule, then the law itself will become infructuous. Under the Prohibition Act people ask for permits for liquor on various grounds such as sickness, medicine, etc. In the same way, if we are to allow exceptions, the law will become useless. If we accept monogamy as the rule, no exceptions should be provided for. Why should there be any exception? When we say that monogamy should be the rule and not the exception, and when monogamy is accepted by the majority of the people of the Province who profess the Hindu religion, there can be no objection whatever to accepting monogamy without any exceptions. Therefore, Sir, I oppose the amendments moved by Dr. John.”

* THE HON. SRI K. MADHAVA MENON :—“ Sir, I want only to clear one position, and that is that if the drafting people have committed a mistake, they have committed the mistake in good company. Dr. John's objection to clauses 2, 3 and 4 is particularly against bad drafting. He said that the definition of the Hindu is ridiculous, because it can as well take a Muslim as a Hindu. Sir, I now refer to the draft Hindu Code as amended by the Select Committee in the Central Assembly. In the definitions sub-clause (4) says ‘ all references to the expression Hindu in any portion of this Code shall be construed as if they included references to a person who is not a Hindu by religion but to whom such portion applies by virtue of the provisions in sub-sections (2) and (3).’ Therefore, it is not a mistake that we committed in the other House. If I may say so, with due deference, the expression in the Bill as it is, is very correct. Not only the draft Hindu

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Code applies to persons who are Buddhists and Jains, but it definitely mentions, as Dr. John has said, that all references to the expression Hindu shall be construed as if they included references to a person who is not a Hindu by religion but to whom such portion applies by virtue of the provisions in sub-sections (2) and (3). Sir, I do not think, therefore, that the drafting requires to be condemned as Dr. John did.

“ Dr. John made much of the word ‘ domiciled ’. With due deference I may say that this mistake is committed in many of the English Acts, where it is said that ‘ this Act applies to all persons domiciled in England. ’ I only refer to Dicey’s Conflict of Laws, on page 95 and onwards where the word ‘ domiciled ’ is defined. It says that a person is domiciled in a place where he is born. The intention of Mr. Kaleswara Rao and the other House is that if a person following the Hindu Law in Madras is living in Bombay, he shall be bound by this Act. The word ‘ domiciled ’ is used very correctly. It is found in all the Madras Acts.”

MR. PRESIDENT :—“ Objection is taken to domicile in Madras.”

THE HON. SRI K. MADHAVA MENON :—“ Sir, this is the very wording in the English Act—domiciled in England.”

MR. PRESIDENT :—“ Domiciled in England is equal to domiciled in India.”

THE HON. SRI K. MADHAVA MENON :—“ It is applicable to all domiciled in Madras. The English Act also has made mention of this word. Therefore, there is nothing so repugnant or so outrageous in the drafting. Let us not be carried away by the arguments of Dr. John that the drafting is so bad, though I am thankful to him for the compliments he pays to drafting in Government Bills though we had heard worse comments about Government drafting from Dr. John than what we heard to-day. If the amendment of Dr. John is accepted, it would mean that the Government will have to do everything. The amendment says—

‘ No Hindu, Buddhist, Jain or Sikh resident in the Province of Madras and having a wife or husband living shall solemnize or go through the form of a marriage except under the provisions of rules made from time to time by the Government and approved by the Legislature. ’

“ That means that everything has to be prepared by rules and that they should come before the Legislature. But, Sri Kaleswara Rao has made a specific provision in the Bill so that the Legislature may not be troubled again. So far as the intrinsic merit of the Bill is concerned we can have our own opinion but, so far as drafting is concerned, if Sri Kaleswara Rao has erred, he has erred in very good company.”

MR. PRESIDENT :—“ I think the purpose of the amendment is to allow second marriage under certain conditions.”

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* DR. V. K. JOHN :—" Under exceptional conditions laid down by the Legislature."

MR. PRESIDENT :—" The main purpose is to allow second marriage under certain conditions."

* DR. V. K. JOHN :—" The purpose of the amendment is to allow bigamy under exceptional conditions determined by rules framed by the Government and sanctioned by the Legislature. But the rule is monogamy."

MR. PRESIDENT :—" But the intention of the amendment is to allow second marriage."

* DR. V. K. JOHN :—" Under exceptional conditions. Now, Sir, I want to say one word about 'domicile'. Last time also I spoke something about this definition of 'domicile'. I have also read the book 'Conflict of Laws' by Mr. Dicey. Mr. Dicey says—

'When once his domicile in a given country is determined, the question within what part of that country (or law district) he is domiciled becomes, for the purpose of this treatise, immaterial. To decide whether D has his legal home in England is important, because upon that fact depends whether certain of his rights are or are not affected by English law. To determine whether D has his legal home in Middlesex or in Surrey is, for the purpose of this treatise, unimportant, since in either case he comes within the operation of the same system of law.'

"Sir, law is the same for all India. You cannot have 'domicile' in Madras for the purpose of some Madras Acts. Without knowing the law, you have used the word 'domicile' which is an accepted term of law. You cannot have a 'domicile' in Madras Province if the same law is prevalent all over India."

MR. PRESIDENT :—" I now put the amendment of Dr. John to the vote of the House, namely :—

'For clauses 2, 3 and 4, substitute the following :—

"2. No Hindu, Buddhist, Jain or Sikh resident in the Province of Madras and having a wife or husband living shall solemnize or go through the form of a marriage except under the provisions of rules made from time to time by the Government and approved by the Legislature.

"3. Any person contravening or abetting the contravention of the provision of section 2 shall be deemed to have committed an offence under section 494 or section 495 of the Indian Penal Code."

The amendment was put and declared lost.

A poll was demanded and the House divided thus :—

Ayes.

- 1 Dr. V. K. John.
- 2 Abdul Latif Farookhi Sahib Bahadur.
- 3 H. M. Jagannatham.
- 4 Dr. Syed Tajuddin Sahib.

- 5 Sri D. Manjappa Hegde.
- 6 " S. B. Adityan.
- 7 " C. N. Muthuranga Mudaliar.
- 8 " A. Govindacharyulu.

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Noes.

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| 1 The Hon. Dr. T. S. S. Rajan. | 8 Dr. U. Rama Rao. |
| 2 The Hon. Sri K. Madhava Menon. | 9 Sri A. Gopalakrishnayya. |
| 3 Sri M. Narayana Menon. | 10 Mrs. M. N. Clubwala. |
| 4 „ B. Bhima Rao. | 11 „ M. Hensman. |
| 5 „ L. Subbarama Reddi. | 12 Sri R. Suryanarayana Rao. |
| 6 „ S. K. Satagopa Mudaliar. | 13 „ N. Ranga Reddi. |
| 7 „ P. Veerabhadraswami. | 14 „ G. Venkata Reddi. |

Neutrals.

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| 1 The Hon. Dr. S. Gurubatham. | 4 K. T. M. Ahmed Ibrahim Sahib |
| 2 Sri N. Sankara Reddi. | Bahadur. |
| 3 „ N. Venkatachalamaji. | 5 Mr. A. S. T. F. Rodriguez. |
| | 6 Sri V. Nagappa Chettiyar. |

Ayes 8. Noes 14. Neutrals 6.

The amendment was lost.

MR. PRESIDENT :—“ I now put clause 2 to the vote of the House.”

Clause 2 was put and carried.

Clause 3 was put and carried.

Clause 4.

MR. PRESIDENT :—“ I wish to point out to the hon. Member Sri A. Govindacharyulu that according to the clause which has just been passed and which prevents a man or woman marrying again, this amendment runs counter to that. The amendment says—

‘ Provided this sub-clause shall not apply to any marriage between a man who has no issue by the first wife and who marries a second wife for the sake of progeny, with the prior written consent of the first wife.’

There is no use of this amendment because under clause 2, he cannot marry whether there is an issue or not. Now that clause 2 has been passed, your amendment runs counter to that.”

SRI R. SURYANARAYANA RAO :—“ Clauses 2 and 3 have been passed. We are now in clause 4 and this is an amendment to clause 4 and the hon. Member is perfectly entitled to move his amendment to clause 4.”

SRI A. GOVINDACHARYULU :—“ Mr. President, Sir, I wish to draw the attention of the House to the wording of my amendment. I have used the word ‘ issue ’ and I have not specified whether it is ‘ male issue ’ or ‘ female issue.’ I merely have said ‘ issue.’ That means any progeny either male or female. Another point in my amendment is that the person can have a second marriage ‘ with the prior consent of the first wife.’ My hon. Friend, the mover of the Bill said that it is very easy to get the consent of the wife for a second marriage. Certainly not”

MR. PRESIDENT :—“ Sri Muthuranga Mudaliyar has also got some amendment on this and I think that amendment is more comprehensive than Mr. Govindacharyulu’s amendment.”

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SRI A. GOVINDACHARYULU :—“ There is difference between the two.”

MR. PRESIDENT :—“ What is the difference? I think one amendment will do and both the amendments may be consolidated into one amendment and it will meet the requirements of both. The main difference between the amendment of Sri C. N. Muthuranga Mudaliar and that of Sri A. Govindacharyulu is that Sri Muthuranga Mudaliyar's amendment does not contain the words ‘ with her written consent.’ I think if we insert those words in Sri Muthuranga Mudaliyar's amendment, it will be enough.”

SRI A. GOVINDACHARYULU :—“ Is the hon. Member Sri Muthuranga Mudaliyar agreeable to this? ”

MR. PRESIDENT :—“ What I suggest is that Mr. Muthuranga Mudaliyar's amendment seems to be more comprehensive and if we add the words ‘ with the written consent of the first wife ’ in his amendment, I think it will meet the purpose of both the amendments.”

SRI C. N. MUTHURANGA MUDALIYAR :—“ Mr. President, Sir, I submit that my amendment is more comprehensive than Mr. Govindacharyulu's amendment except for the fact that I have not provided for the written consent of the first wife in my amendment. Of course the consent of the wife is implied. The words ‘ written consent ’ is an additional thing in his amendment. I shall have no objection to adding those words in my amendment if the Hon. President so desires.”

MR. PRESIDENT :—“ I think if you add the words ‘ with her written consent,’ it will meet both. I shall now read the amendment of Sri Muthuranga Mudaliyar with the addition of these words and then Sri A. Govindacharyulu may speak on it.

‘ Add the following as the proviso to clause 4 (1) :—

“ *Provided that any man shall have the right to marry another woman during the lifetime of his first wife with her written consent if the first wife has not given birth to any child after her marriage with him or if she is sick or unfit for marital duties and such marriage shall not be void under any of the provisions of this Act.*”

Does the hon. Mr. Muthuranga Mudaliyar agree to the inclusion of the words ‘ with her written consent ’? ”

SRI C. N. MUTHURANGA MUDALIYAR :—“ Yes, Sir, I agree.”

MR. PRESIDENT :—“ Sri Govindacharyulu may now speak on the amendment.”

12-45 p.m. SRI A. GOVINDACHARYULU :—“ I am afraid, Sir, that we are riding rough-shod over the ideals of Hindu marriage and trampling on Hindu religion, custom and usage. If we say that no

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man can marry a second time even for the sake of progeny, then we would be prescribing one remedy for all diseases, the remedy of adoption for couples who have no children. You will be giving them no chance to have a progeny of their own. The mover of the Bill, while arguing with me, asked why the same right should not be given to women also. Certainly, I have the least objection to it. Dr. Rajan said the other day that the women alone should not be taken to be the cause of childlessness. Another doctor friend of mine told me that there is an inherent natural physical difficulty in women after a certain age for bringing forth children, but no such limitation exists in the case of men."

MR. PRESIDENT :—" The hon. Member wants to give the same rights to women also."

SRI A. GOVINDACHARYULU :—" If a woman after a certain number of years of marriage has had no children by her husband, she may be allowed to marry another for the sake of progeny. I have no objection if others want it to be so. Let there be equal rights for both. But I do not think that any woman after she has reached the age of 45 years and has had no children, will want to marry again, because I am told that on account of certain physical conditions, it is not possible for her to bear children after that age. There is no question of equality here.

" Sir, in 1926, the late Lala Lajput Rai, the Punjab Kesari, came to Madras and the Women's Association presented an address to him asking for equal rights for women. The great national leader, the Punjab Kesari replied that there was the least objection to give equal rights to women provided God also would change his mind and make women and men equal in every respect—physically and mentally."

MR. PRESIDENT :—" Even in the capacity to bear children." (Laughter.)

SRI A. GOVINDACHARYULU :—" Therefore, the question of equality does not arise so far as progeny is concerned. There is an inherent capacity in man to bring forth children up to a certain age. In the case of a woman, after a certain age there is an inherent disability. Therefore, man alone should be given the right or option to re-marry provided the wife gives her consent. The wife will not easily give her consent unless she also feels the same desire for a progeny for her husband. After all Hindu religion, Dharma and custom revolve round Karma Siddhanta, which says that we must have progeny. Marriage is for the sake of getting progeny and not for indulgence. Now you say that a man should not have a second marriage whether he has children or not and whether the first wife gives her consent for the second marriage or not. But if the wife is divorced the man can marry again. After divorce the man can marry again and the woman also can marry again, any number of times. The only question is it should be done after the end of the existing marriage. Suppose a husband

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and wife want progeny and the wife also consents to the second marriage of the husband. But this Bill says that there must be a divorce. For the sake of a formal divorce, they will pick up a quarrel and say that they will be divorced. The law can be circumvented in so many ways, whatever may be the penal provisions. Therefore, I say there is absolutely nothing objectionable in the amendment. The hon. Mover of the Bill, Mr. Ranga Reddi can accept it, because it has provided for the consent of the wife. When the consent of the wife has to be obtained for the re-marriage of the husband, where is the difficulty in accepting the amendment? I request the hon. Mover not to be obstinate but to accept the amendment for the sake of Hindu religion and Karma Siddhanta. If he rejects my appeal, I appeal to the House to accept the amendment."

* SRI C. N. MUTHURANGA MUDALIYAR :—" Mr. President, Sir, I am glad that my amendment has preceded me. It is through your good offices that Mr. Govindacharyulu has accepted my amendment with the modifications of his own. I have agreed to the modifications. In supporting the amendment before the House, I must say that it is a proviso which provides for exceptions in this Bigamous Marriages Prevention Bill. Every rule has an exception. It is not as if people are roaming about and running after women for marrying a second time and a third time in this country. This country has always been observing monogamous marriages. Only in exceptional circumstances a second marriage is performed. Our ancient law-givers—Manu, Yagnyavalkya and Bodhayana—have legislated in their own way for monogamous marriages. They have also provided for second marriage in cases of childlessness or incurable diseases.

" Coming to later times, we have had the Nambudiri Marriage Bill. That also is a Monogamous Marriage Bill. An exception is provided there, that if a Nambudri Brahman marries a Nambudri woman and for ten years he is issueless, he can marry a second Nambudri wife. It is there in the Act."

THE HON. SRI K. MADHAVA MENON :—" That is taken away by this Bill."

SRI C. N. MUTHURANGA MUDALIYAR :—" I know you are so anxious that none should have any issue. (Laughter.) In 1946, the Government of India have brought forward the Hindu Code. There also they have not absolutely tabooed second marriage like the sponsor of this Bill. They have provided that a Hindu who has got his first wife can marry again, but the first wife must be given maintenance and if she so chooses, must be provided with a separate living quarter. This contemplates a second marriage. The Bill before us is said to be a concurrent legislation. The Government of India may enact it or this Province may enact it. All the difficulties of domicile and other matters raised by my hon. Friend Dr. V. K. John would not arise if the Centre brings up this Bill. The Centre also is preparing to bring a Bill like this. Where is

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the need for such a hurry? My hon. Friend Mr. Madhava Menon says that we should not wait, because it would take a long time for the Centre to bring forward a Bill, as if people here are anxious to divorce immediately. Our friend, the whip of the Congress Party, brought in the analogy of the Alexandria Library for getting through this Bill. All this is surprising to me, Sir. When the Bill was brought before the House on the first non-official day, the hon. Lady Member, Mrs. Mona Hensman let slip a remark that all those who oppose the Bill are anxious to get married again"

Mrs. MONA HENSMAN :—" On a point of personal explanation, Mr. President, I did not say that"

SRI C. N. MUTHURANGA MUDALIYAR :—" No personal explanation will be accepted now. I do not stand on formalities. Yesterday, my hon. Friend Mr. Ranga Reddi, taking shelter behind her remark quoted her and said that as Mr. Muthuranga Mudaliyar is opposing the Bill he wants to marry again. (Laughter.) I am tempted to retort to the mover of the Bill by saying that he is anxious to divorce his wife and marry again and that is why he is keen on getting this Bill passed immediately. I can say it, but I do not like to say it. I have said it in a way also.

" Sir, the Hon. Dr. Rajan said the other day that medical science and medical research has advanced to such an extent that no disease can be considered incurable. My amendment was given before Dr. Rajan made his speech. So I have provided for sickness and other things. After hearing Dr. Rajan, I think that the latter portion relating to sickness and other things is unnecessary and may be removed from my amendment. Sir, my only point is this. Exception should be made for a second marriage, only in the case of childlessness. The purpose of marriage is to bring forth progeny. That is the Hindu civilization and Hindu custom.

" But the modern tendency is to get married and use con- 1 p.m.
traceptives. Hindu Dharma provides marriage to bring forth progeny. It is on that score that I stand on this amendment. Having seen the fate of Dr. V. K. John's amendment, I know to what fate my amendment will be subjected. Still I am bold enough to move this amendment before this House for " He is a slave who dare not be on the right with two or three." That is why I am impelled to move this amendment and stand by it and implore the members of this House to give their vote for this amendment. If they have decided otherwise, it is their look-out and I must take it that I am the only man standing in this House to safeguard the Hindu Dharma, the Hindu customs and the Hindu morality in this country. Sir, I support the amendment moved by Mr. Govindacharyulu."

* DR. V. K. JOHN :—" Sir, I want to say one or two words in support of this amendment. In my opinion, we, the members of this House, must always try to ascertain the opinion of the community as a whole. Our individual opinion may be one and

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that of the community may be another. But we are in a representative capacity in this House and one point we have to ascertain in connexion with the amendment is, is it the overwhelming and preponderating opinion of Hindus, Jains, Buddhists and Sikhs, when the first wife has no child and if she gives her consent to her husband for marrying a second wife, whether there should be any legislation against it. Personally, I am of the opinion that that is not the sense of the community as a whole that there should be no legislation preventing second marriage in such a case. In such circumstances where a man has no issue and where the wife herself wants to marry him again, he must be allowed to marry a second wife. Whether the consent has been properly obtained or not, is a matter for the court of law to decide. I think this is in consonance with the opinion of the community as a whole. Therefore, such persons should be allowed to marry again."

THE HON. SRI K. MADHAVA MENON :—" Dr. John was telling us some time ago that he was bold enough to oppose some of the provisions of the Bill in spite of his wife's order not to do so and he has dared to go against it."

DR. V. K. JOHN :—" Because your wife is present here, you are supporting it."

* THE HON. SRI K. MADHAVA MENON :—" Even if she is not present here, I will not consider it a disgrace if I can oblige my wife by supporting the present Bill."

" Mr. Muthuranga Mudaliyar rather accused me that I do not want anybody to have any issues. That is not what I meant. I want hon. Members to give the Bill a dispassionate consideration."

" Mr. Govindacharyulu quoted the Hindu Dharma Sastra, the days of Bharatha in support of his argument. Sir, we have gone against many of the tenets of Manu. Many of the penal provisions of Manu have been changed. In this respect even the Muhammadan Law has been changed by the Penal Code. So many of the old and puranic customs are being changed according to the change of time. Times have changed and we cannot continue to follow the same old customs and practices. It is high time that we change our old habits and customs for the better. It is not for progeny alone that marriage is performed as Mr. Muthuranga Mudaliyar has said. It is also for something else. By performing some other functions, we are not disregarding our Hindu Dharma or God. But we must be sincere and honest in our dealings. Though Govindacharyulu might have argued for argument's sake, will he honestly approve Niyoga practice of old days? Why do you think that want of issue is due to some defects of the wife alone? Modern science has testified that the defect of the husband is also equally responsible for want of issue. Have you ever tried to find out who is responsible—either the husband or the wife—for childlessness. In this connexion, it has been said that the consent of the first wife might have been obtained for the

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second marriage. What else could a wife do under the circumstances. She is entirely dependent on him and is under his supreme power. Dr. John said that whether a husband has obtained his wife's consent by her own free will or by coercion can be ascertained in a court of law. I do not think that is a correct position for him to take. I have had experience of the feelings of some *sapathnis* in this respect. Modern opinion is against the idea contained in this amendment. I say, respect modern opinion. Modern opinion says, that monogamy should be the rule and if an exception is to be made, let there be equal standards in this matter."

SRI C. N. MUTHURANGA MUDALIYAR :—" Does it apply to people coming under the Marumakkattayam Act? "

* THE HON. SRI K. MADHAVA MENON :—" Certainly, Sir. We have passed the Malabar Marumakkattayam Act.

" Even now there are persons who, though they have no issue, for so many years, are not marrying a second time for the sake of progeny. According to the Hindu Dharma also, we can adopt a child for the sake of progeny. Therefore there is no point in the arguments of Mr. Muthuranga Mudaliyar and Mr. Govindacharyulu. I oppose the amendment."

* MRS. M. N. CLUBWALA :—" Mr. President, I rise with some trepidation. So many hon. Members have spoken strongly in favour of the Bill and some of them have also spoken against the Bill on the ground that the provisions contained in the Bill are opposed to Hindu Dharma. I may say that no true *shastra* can oppose any of the provisions and no two *shastras* are alike. If all husbands are Ramas there will be no divorce. I would like to endorse what all the Hon. Mr. Madhava Menon has said about the way the consent is obtained. How are we to know how the consent has been obtained. Sir, many of the women are illiterate and pressure may be brought on them to obtain their consent, and that would be very unfair. Moreover an Indian woman is always devoted to her husband and she could not go against his wishes. Some arguments have been advanced by some hon. Members that it is due to the defect of the woman, that there is childlessness. But the question is, who is to determine whether it is the husband or the wife who is suffering from any disability. So that is an important point that should be considered.

" Sir, provision does not seem to be made for the first wife when she does not wish to live with her husband to have maintenance for her children, and herself. This is all what I want to say."

* SRI N. RANGA REDDI :—" Mr. President, Sir, I have nothing more to say except to oppose this amendment. The point mentioned again by the Mover of the amendment has been replied by many hon. Members of this House. Mr. Govindacharyulu who spoke on this amendment said that religion was in danger and that

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we are interfering with our religious practices. I may submit, Sir, that even at the time when I introduced this Bill, I said that the old orthodox people who are not in favour of introducing any kind of reform either with regard to marriage or any other social matters, always say that religion is in danger. Sir, we have seen how the Widow Remarriage Act and the *Sharda* Act have been placed on the Statute Book. By these two Acts, so many people have been benefited. So also, in the same manner if this Bill is passed into law, it will benefit a great number of people.

“ One hon. Friend has said that by this Bill, women claim equal rights along with men. I do not think that they claim equality in all fields. They are only complementary to another. Now, medical science says that human beings are bisexual, probably man contains something of a woman and a woman contains something of a man and after a certain stage they probably come out as man and woman. Whatever it is, my point is man and woman are complementary to each other and they cannot change place in all walks of life. If we can view things in that perspective, we can see the point that women should not be placed at a disadvantageous position. Woman has always been by the side of a man in all fields. Therefore, it is time that we should remedy these defects and give liberty to women also. The man does not suffer in any way by conceding this right. Therefore, I oppose this amendment.”

The amendment was put and declared lost.

A poll was demanded and the House divided thus :—

Ayes.

- | | |
|--------------------------|---------------------------------|
| 1 Dr. V. K. John. | 4 Sri S. B. Adityan. |
| 2 Sri H. M. Jagannatham. | 5 „ C. N. Muthuranga Mudaliyar. |
| 3 „ D. Menjappa Hegde. | 6 „ A. Govindacharyulu. |

Noes.

- | | |
|----------------------------------|------------------------------|
| 1 The Hon. Dr. T. S. S. Rajan. | 9 Sri A. Gopalakrishnayya. |
| 2 The Hon. Sri K. Madhava Menon. | 10 Mrs. Mona Hensman. |
| 3 Sri N. Narayana Menon. | 11 „ M. N. Clubwala. |
| 4 „ B. Bhima Rao. | 12 Sri R. Suryanarayana Rao. |
| 5 „ L. Subbarama Reddi. | 13 „ N. Ranga Reddi. |
| 6 „ S. K. Satagopa Mudaliyar. | 14 „ G. Venkata Reddi. |
| 7 „ P. Veerabhadraswami. | 15 „ C. Veerabhadra Rao. |
| 8 The Hon. Dr. S. Gurubatham. | |

Neutrals.

- | | |
|---------------------------------------|--------------------------------|
| 1 Sri N. Sankara Reddi. | 4 K. T. M. Ahmed Ibrahim Sahib |
| 2 „ N. Venkatachalamaji. | Bahadur. |
| 3 Abdul Latif Farookhi Sahib Bahadur. | 5 Mr. A. S. T. F. Rodriguez. |

Ayes 6 : Noes 15 : Neutrals 5.

The amendment was lost.

Clause 4 was put and carried.

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Clause 5.

* DR. V. K. JOHN :—" Sir, I move the following amendment 1-15
that stands in my name :— p.m.

For clauses 5 to 8, substitute the following :—

" The provisions of the Indian Divorce Act, 1869, shall apply to Hindus, Buddhists, Jains and Sikhs, resident in the Province of Madras notwithstanding the provisions to the contrary in section 2 of the said Act."

" On this, Sir, I do not want to make a long speech, but I would say for the information of the ladies who are watching the progress of this Bill that though this Bill is popularly known as a Monogamous Bill, it is actually a Divorce Bill and the real intention of the framers and the sponsors of this Bill, in my opinion, is to provide for divorce, and they have provided for monogamy as an excuse for divorce, because there is no provision against concubinage. Divorce is not recognized under Hindu Law and they want divorce. If you read newspapers you will find how society is disrupted both in Europe and America and how there are thousands of cases in the matrimonial courts in England and thousands and thousands of such cases in America. This sort of open door tempts people with the result that society is disrupted. It is not for the good of the society, especially when in this country we are not accustomed to divorce. Of course, you may help educated women. If a man wants to marry another woman, he can drive a woman mad and if she remains mad for five years he can marry another woman. What will be the position of such a woman in the hands of an unscrupulous man. He will merely divorce his wife and the woman will be helpless. I want the women of this Province not to be carried away by sections 3 and 4 of the Bill, but let them direct their attention to section 5 and those that follow it. I condemn this Bill because I do not think it is the opinion of the majority of Hindus, Buddhists, Jains and Sikhs of this Province or anywhere in this country that a man should be allowed to divorce his wife. If you want to provide for divorce, give it to the woman and let that right be confined to the woman. The proper course would be for the woman to go to the court and get a divorce against her husband. I say this Bill in the hands of unscrupulous persons will do great harm because they will divorce their wives and marry again.

" I repeat Sir, the second part of the Bill namely divorce is, I think, the main object of this Bill. As I said in the beginning, previously 999 out of 1,000 Hindus do not take a second wife when the first wife is alive and a law providing for monogamy does not make much of a difference. I want to impress on this House that you are running into something which you ought not to, because you will put women to misery. You may therefore reject that part of the Bill and if you will not confer the right of divorce on women and if that is not possible, I am for pressing my amendment. After all, we have to-day passed from the stage of slavery to Independence

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and if we have to keep the integrity, solidarity and unity of this country, we should have a unified law for everybody. Therefore, why not adopt the provisions of the Indian Divorce Act *in toto* for Hindus, Jains, Buddhists and Sikhs. No civilized system of law allows divorce in the case of a man whose wife happens to be mad for a continuous period of five years on the date of the petition—not from the date of the marriage. The duty of the husband is to look after an insane wife and not divorce her. The other day, my hon. Friend, Mr. Ranga Reddi said, no, you must maintain her. Suppose no maintenance is paid to her, she will have to go to the court. Can a woman who is not looked after actually get maintenance from the husband? It is oppressive on the woman that if she is mad for five years, there can be divorce. I do not find such a provision in any system of law either in the American or English Divorce Acts. Hereafter we are not Hindus or Mussalmans. Let us have one common law. Therefore, I am moving this amendment.

“ If you look at clause 8, you will see that it is clumsily worded. Again if you refer to section 6 (f), it says : ‘ any other matter for which no provision or no sufficient provision is made in this Act, and for which provision is either made in the Indian Divorce Act, 1869, or considered to be necessary by the Provincial Government for giving effect to the purposes of this Act ’ the Provincial Government may make rules to carry into effect the purposes of this Act. Now, Sir, what I suggest is, let us have the Indian Divorce Act, because that is a complete system of law which provides for the filing of an application, for contesting an application, for the duties of the court, for separation, for nullity and for various other things. It is a comprehensive law. When there is a comprehensive Code to-day existing in this country and a unified system of law for all India, why should you introduce a new provision which does not obtain in any other part of the world. I do not attribute any motive to anybody when I say that the framers of this Bill did not understand the weakness of the provisions in sections 5 to 8—not being conversant with divorce law. As I said before this is not a monogamous Bill but a divorce Bill. I therefore suggest that either you amend sections 5 to 8 as proposed in my amendment or confine divorce for women only or at least let us attract the Indian Divorce Act and let us not go beyond that.”

SRI H. M. JAGANNATHAM :—“ I second the amendment, Sir.”

1-30
p.m.

MRS. MONA HENSMAN :—“ Mr. President, one thing I would tell the hon. Member who has just sat down after referring in smooth and flowing terms to the cause of the women outside House. He urged, that the right of divorce might be confined to women and it should not be given to man. I challenge him Mr. President, to ask this House and the Nation whether it is not better for a woman to be called to the court and be divorced by her husband than to sit in her home with the husband having a second

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wife, the second marriage having been contracted by her husband without the right of her going home; she could leave the man who has married; she may go to her home; she may have alimony and she may have the satisfaction perhaps of being allowed some of her children and she may even have—but I do not think that would happen in this country—even the right of finding other support than the man who sent her away. Is it not better that the woman should have a right of divorce an open divorce than to have the secret putting on of another woman in her home. The hon. Gentleman who has just spoken may know the Divorce laws backwards and upwards, point to point but, Sir, we, women, know the result of such things in our homes and any of the alternatives that he has given will only give them a superficial and specious right while the man will have the satisfaction of having two wives in his home. Sir, we cannot accept his amendment and I would request the House to throw it out on the grounds brought by him.”

* SRI N. RANGA REDDI:—“ Mr. President, I oppose the amendment. My hon. Friend said that it was an eye-wash to say that it aims at monogamy and that the purpose of the Bill is to provide for divorce. This Bill provides for both monogamy and also for divorce and there is no eye-wash at all.

“ He urged that the right of divorce should be confined to women and his main argument seems to be that unscrupulous husbands would divorce their wives on flimsy grounds and they will be deserted. I really appreciate his arguments when he says that women have to be given protection but I feel that his argument is not very genuine and his purpose is to see that this Bill is thrown out on some ground or another and therefore, it is that he has put forward the plea that women alone should be given the right of divorce. As my Friend Mr. Kaleswara Rao has suggested, if the home cannot be run smoothly either on account of the wife or on account of the husband, the peace of the home must be secured. Now monogamy is the practice and it is sought to be made the law by this Bill. Supposing the wife runs away with another man and if the suggestion of Mr. John were to be accepted, the man will have to sit idle; what is the man to do? So the right of divorce should be given to both the man and the woman alike. My hon. Friend said that divorce stands by itself and the husband does not incur any further responsibility after the divorce. I have pointed out more than once in the course of the discussion that the husband has the obligation to protect and give maintenance to the divorced wife after the divorce till she is married. But the position is different if she had been unchaste or has refused to live with her husband in pursuance of a court decree for under the Act of 1916 she is entitled to some maintenance in such circumstances.

“ He has suggested that there should be one uniform personal law for all people. I appreciate the suggestion. But if there is to be any such move to introduce one uniform personal law for all people, the Muslim will be up against it saying that their culture

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is being jeopardized and that their religion is being interfered with and they will question: 'What right have these Hindus to dictate to us or to legislate for the Muslims?' Probably it is in that spirit that the Muslim members of the House have not voted one way or the other and they have remained neutral and it is in that way that their attitude has to be interpreted. Even with regard to a uniform procedure with regard to divorce, I submit, Sir, the arguments of my hon. Friend Dr. John cannot be accepted. We are introducing a new rule of law and it is not necessary that we should copy word for word what is contained in other enactments, the Indian Divorce Act for instance. There is provision for divorce in the Islamic law and the procedure prescribed for that purpose in the Muslim law is quite different from what is laid down in the Indian Divorce Act. It is not, therefore, necessary that we should follow the procedure prescribed for Christians for divorce. Further it is now too early to think of a uniform personal law for all people living in the Province. So far as the provisions for divorce are concerned, they have been taken from Rao's Hindu Code and there ought to be no objection for accepting this principle. I therefore oppose the amendment and it ought not to be accepted."

The amendment was put and declared lost.

SRI C. N. MUTHURANGA MUDALIYAR:—"Mr. President, there is one other amendment standing in my name and if I should have moved it, my work is over. I move, Sir, that in clause 5 (1) (b) for the words 'is a concubine of any other man or is leading the life of a prostitute', substitute 'is unchaste'."

MR. PRESIDENT:—"Can a woman be the concubine of her own husband?"

SRI C. N. MUTHURANGA MUDALIYAR:—"I do not know, Sir."

MR. PRESIDENT:—"The wording is: 'is the concubine of any other man'."

SRI C. N. MUTHURANGA MUDALIYAR:—"I do not know if the modern law permits it. Under the ancient law a woman can only be the wife of her husband and not the concubine of her husband."

"By the amendment I have suggested I do not propose to bring about a revolution taking you back to the ancient days of uchikudimies and madisanchies; we are all living in the modern world and my object in bringing this amendment is to make the Bill decent enough so that it might fit nicely into the statute book. Now we see the language used is so vulgar that I do not want the statute book to be besmirched with these vulgar words and that is why I have used the modest words 'is unchaste' and I do not think it will be unacceptable to the sponsors of the Bill or to the House but if still they oppose and defeat it, I do not mind since it is not going to change the character of the Bill."

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SRI H. M. JAGANNATHAM :—" I second the amendment."

SRI N. RANGA REDDI :—" I regret very much that I cannot accept the amendment for the simple reason that the definition of the word 'unchaste' has not been given."

SRI C. N. MUTHURANGA MUDALIYAR :—" I may tell my hon. Friend that the phrase is found in the Hindu Code passed in 1946, Act XIX of 1946, by the Central Assembly."

* SRI N. RANGA REDDI :—" The ground mentioned by the hon. Member 'unchastity on the part of the wife' may appeal to many people but it is difficult to accept it. There is a provision in the Hindu Law that if immorality on the part of a wife is condoned by her husband, she becomes entitled to what is called a starvation maintenance. According to the amendment of my hon. Friend even such stray acts can be a real ground for divorce and if the amendment is accepted, irrespective of what is laid down in the Hindu Law and has been sanctioned from time immemorial, we are trying to undo them. In fact most of the arguments in connection with divorce has proceeded on the basis that the moment the petition for divorce is filed in a court of law, it is immediately granted without giving a chance to the parties to come to a settlement. If on that ground divorce is to be granted, family life will be disrupted every time a man or woman goes astray. After all it may not be a case of wanton unchastity. Such difficulties might arise and for that reason, I am unable to accept the amendment."

THE HON. SRI K. MADHAVA MENON :—" Regarding the point raised by the President, these are the words found in the Hindu Code Select Committee Report :

'or if the wife is the concubine of any other man or leads the life of a prostitute.'

These are the words in the Hindu Law draft."

MR. PRESIDENT :—" So, the vulgarity is central and not provincial? "

The amendment was put and lost.

* SRI S. B. ADITYAN :—" Mr. President, the object of my amendment is to drop sub-section (2) of section 5 which says that the wife who has completed 18 years of age may present a petition for the dissolution of the marriage without stating reason."

MR. PRESIDENT :—" I do not want to interrupt the hon. Member. I suppose the hon. Member referred to this particular aspect in his comments in the general discussion of the Bill. I suppose he remembers it."

* SRI S. B. ADITYAN :—" Yes, Sir."

MR. PRESIDENT :—" So, I suggest you might be brief."

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* SRI S. B. ADITYAN :—“ I will not take more than five minutes. Obviously all that the framers of the Bill had in mind was the marriage of a young man who wanted to go quickly through the form of a ceremony and contract a second marriage. The section invalidates such marriage even though it was performed before the coming into force of this Act. I wish to point out that the section strikes much deeper and it strikes at marriages which have been held valid for the last forty years. I have in mind the case of a person who married his first wife some forty-six years ago and his second wife forty years ago. They have been living as man and wives for such a long time. And now what does this section propose to do. It invests the first wife with a right to dissolve the marriage for no reason whatsoever except that the second marriage was performed some forty years ago. I first thought that the words ‘ before the commencement of this Act ’ was an error for the words ‘ after the commencement of this Act.’ I see it is deliberately used. I suggest it is totally unjust and wrong to invest a person with a right to invalidate a marriage performed forty years ago and which was accepted as right all along by the parties thereto, the relatives of the parties and by society. Now it is said that a wife who had been in marital relations with her husband for so long is not likely to come to court and ask for divorce. Sir, to contend like this, is, to say the least, what a legislature should not do, because, we should not invest a person with a right in the pious hope that he or she will not exercise it. Look at the reasons for which a divorce can be claimed? Read the sub-clauses of clause 5 (1). Are these reasons not enough for a wife in the case of a marriage solemnized forty years ago before the commencement of this Act? Why should she get a divorce without assigning reason? I hope the sponsor of this measure in this House will make a note of it and deal with this point in his reply.

“ Sir, there is very little time before me. Another reason given by the sponsor of this Bill is that there is a similar provision existing in the Hindu Code. I said, first, without looking into Code and it would be surprising if there is such a provision, for the framers of the Hindu Code would not easily set aside what has been held valid by society so long. I looked into the Hindu Code and I find exactly the opposite is provided. Refer to section 29 (ii), which says, ‘ except in the case of a marriage celebrated before the commencement of this Code which was valid at the time of celebration ’, etc.”

MR. PRESIDENT :—“ It is the same as in the Bill.”

* SRI S. B. ADITYAN :—“ No, it is the opposite. What the Code says is, in the case I have in mind, people who are married twenty or thirty years ago, they having been a party to marriage and the marriage having been recognized as valid at the time of marriage cannot come now and say that there is a second wife to the husband and so an action for divorce should lie. I have got in mind the case of a Member of this House, whose case is exactly

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parallel to that I mentioned as an example to the House. There was a first marriage in 1896 and there was a second marriage in 1906. Now if the present clause is to be passed as it is, it would invest the first wife with a right for divorce. Therefore, I say it is unjust that such right should be given. Finally, Sir, it is sometimes said that if any amendment is carried in this House, then the Bill will have to go back to the Assembly. It is an error to oppose all amendments on this score in this House. I am convinced it is our duty to rectify any error even if the rectification of it would involve the Bill going back to the other House. Otherwise there is no reason for the existence of this House."

MR. PRESIDENT :—" That argument does not count as all members of this House are free to vote as they like."

SRI S. B. ADITYAN :—" Exactly, I hope that fact would be borne in mind now by the members. I hope this error will be rectified at this stage."

* DR. V. K. JOHN :—" Sir, I strongly support the amendment, and I hope hon. Members will realize their responsibility, that every one of us is responsible for passing this Bill. I have not the slightest doubt that there is a mistake here."

MR. PRESIDENT :—" It is no mistake; it is deliberately put."

* DR. V. K. JOHN :—" Then, Sir, this Bill is brought with some ulterior motive. (Laughter.) For the benefit of members of this House I will clarify the position. The amendment seeks to omit clause 5 (2)."

MR. PRESIDENT :—" I am told this was put in by the joint select committee."

* DR. V. K. JOHN :—" Whatever it is, when a mistake is discovered what is the function of this House if it is not to correct it? Now, the point is this clause seeks to give retrospective effect to marital relationship. After a man and woman have lived for several years as husband and wife it is now proposed to give the first wife right to seek divorce on the ground that there is a second wife for her husband. I appeal to every member of this House to realize his responsibility in passing this clause 5 (2) as it is. I vehemently oppose this clause and support the amendment."

* SRI N. RANGA REDDI :—" Sir, I oppose the amendment for this reason. As I submitted already, a similar provision is already there in the Central Act. It provides for maintenance to a woman if her husband marries a second wife. This is purely an extension of that principle in the sense that divorce has been granted. If a wife can get separate maintenance and resides away from her husband, what is to be her position? She is denied her marital duties, and supposing she wants to marry another person, why should she not be allowed to marry? Then, another thing also; I do not think any wife after living with her husband so long as 20 or 30 years will choose to divorce her husband. It is a well known

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fact that there is a Hindu Widows Remarriage Act, under which, every widow, if she wants, can remarry. But when there is no chance for even virgin widows to remarry, who will do it? So for these reasons this provision ought to be allowed to continue."

The amendment was put and lost.

Clause 5 was put and carried.

Clause 6 was put and carried.

Clauses 7, 8, 1 and the preamble were separately put and carried.

SRI N. RANGA REDDI :—" Mr. President, Sir, I beg to move that the Bill be passed into law. In doing so, I would like to congratulate Mr. Kaleswara Rao in having piloted this Bill in the other House, and I would like to congratulate . . ."

MR. PRESIDENT :—" Yourself." (Laughter.)

SRI N. RANGA REDDI :—" The other members of this House who have given their entire support for passing this Bill."

MR. PRESIDENT :—" Also the neutral who did not oppose the passing of this Bill!" (Laughter.)

SRI N. RANGA REDDI :—" I should also express my sincere thanks to the Government for having provided a non-official day as early as possible for passing this Bill, and also the President for his co-operation in providing a complete day and also the Government in permitting an official day to be converted into a non-official day.

2 p.m.

* DR. V. K. JOHN :—" Sir, while it is usual to congratulate members who have been responsible for piloting a Bill, I am constrained to utter a warning in this case. Having some knowledge of the increasing number of cases in Europe, America and other parts of the world where divorce is allowed, I say that this Bill—I characterise this not as a monogamy Bill but as a divorce Bill—will open the floodgates of disruption in Indian families which have not been there for thousands of years. You will find that courts will receive a large number of applications for divorce as is the case in England where the number runs into thousands. In my opinion the monogamy aspect of the Bill will not do much good to the people, because monogamy is the existing practice. The Catholic Church prescribes monogamy but does not allow divorce. I say divorce does not follow from monogamy. We may have provided for monogamy and a large majority of the people are for it. But we need not have provided for divorce. It is a mistake and a tragedy that we should have provided for divorce in Hindu society. As years go by, you will find that the disruption found in the other parts of the world will set in in the families of Hindus, Buddhists, Jains and Sikhs. I regret that that part of the Bill should have been passed into law."

The motion was put and carried.

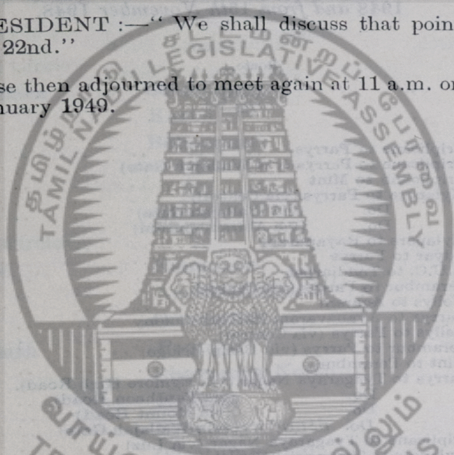
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THE HON. DR. T. S. S. RAJAN :—“ I propose that the House be now adjourned to meet again at 11 a.m. on 22nd January. There is a function to-day afternoon where the President of the Congress is meeting the party members.”

ABDUL LATIF FAROOKHI SAHIB BAHADUR :—“ Sir, before you adjourn the House, I would request the Hon. Leader of the House to provide an early opportunity for the discussion of the other non-official Bills. If there is no non-official day, an official day can be converted into a non-official day.”

MR. PRESIDENT :—“ We shall discuss that point when we meet on the 22nd.”

The House then adjourned to meet again at 11 a.m. on Saturday, the 22nd January 1949.



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